

SW



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/364,794	07/30/1999	J. ERIC BERGE	7480-PA1CP2	9884

27111 7590 12/12/2003

BROWN, MARTIN, HALLER & MCCLAIN LLP  
1660 UNION STREET  
SAN DIEGO, CA 92101-2926

EXAMINER

SHAPIRO, JEFFERY A

ART UNIT	PAPER NUMBER
----------	--------------

3653

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/364,794

Applicant(s)

BERGE ET AL.

Examiner

Jeffrey A. Shapiro

Art Unit

3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 165-204 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 165-204 is/are rejected.
- 7) ☒ Claim(s) 173, 197 and 198 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 34.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 9/3/03 has been entered.

### ***Claim Objections***

2. Claim 173 is objected to because of the following informalities: in line 2, it is suggested that "communication into said branch" be reworded as "communication with said branch." Appropriate correction is required.

3. Claim 198 is objected to because of the following informalities: In line 7, it appears that "said downstream said" should be "said downstream side." Appropriate correction is required.

4. Claim 197 is objected to because of the following informalities: Claim 197 depends from itself. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3653

6. Claims 165 and 192 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 165 recites the limitations "said ice" and "said remote locations", in lines 5 and 6. There is insufficient antecedent basis for this limitation in the claim. These, and other elements/limitations also have insufficient antecedent basis, of which those cited above are examples. It is suggested that the preamble read --an apparatus for conveying ice, comprising:-- with these limitations positively recited in the body of the claim. Note also in line 10, it appears that "plurality of receptors" should be --said plurality of receptors--. Claim 192 appears to have equivalent deficiencies.

8. Claim 167 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 165 recites "two, three or four alternate branch ice conduits." There are too many combinations presented, thereby making the claim indefinite.

9. Claim 169 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 169 recites in lines 1 and 2, "a shifter for motivating routing ice conveyance..." It is not clear what is being referred to, "motivating" or "routing."

Art Unit: 3653

10. Claim 173 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In lines 3 and 4, it is not clear what the phrase "and spaced apart from said second point" refers to. For example, does "spaced apart" refer only to the vacuum line or the branch conduit or the second point of connection.

11. Claim 174 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In lines 3-5, it is unclear what the phrase "such that in said internal breadth portion velocity of air moving..." It is suggested that a "comma" be placed after "portion" and before "velocity" with the word "the" being placed before both recitations of the word "velocity".

12. Claim 176 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear what has a maximum inside width, the hollow conduit or the vacuum line, or another unstated limitation.

13. Claim 184 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear in lines 5 and 6, what "removes from said conduit."

***Allowable Subject Matter***

14. Claims 165-204 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

15. The following is a statement of reasons for the indication of allowable subject matter.

None of the references taken individually or collectively teach or anticipate the apparatus for conveying ice having a source of ice, and having "a vacuum pump in fluid communication through a vacuum line with each said receptor for withdrawing air from said conduits and creating a vacuum...in said conduits" and said receptor, therefore resulting in the ice being pulled through the system rather than pushed through the system. Applicant's specification on p.6, lines 3-6, indicates that the use of a vacuum in such an ice system reduces noise produced by positive pressure systems.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone number for the organization where this application or proceeding is assigned is (703)306-4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

Art Unit: 3653



Jeffrey A. Shapiro  
Examiner  
Art Unit 3653

December 10, 2003



DONALD P. WALSH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600